

UNITED STATES DISTRICT COURT  
Northern District of California  
San Francisco Division

BOARD OF TRUSTEES OF THE CEMENT  
MASON'S HEALTH AND WELFARE  
TRUST FUND FOR NORTHERN  
CALIFORNIA et al.,

No. C 10-03344 LB

## Plaintiffs,

**ORDER TO SHOW CAUSE AND  
SETTING FURTHER CASE  
MANAGEMENT CONFERENCE**

V.

C AND C CONCRETE, INC., et al.,

## Defendants.

18 On July 29, 2010, Plaintiffs – the trustees of employee benefits plans for masons and other  
19 covered employees in the construction industry – filed a complaint against Defendants C and C  
20 Concrete, Inc. (“C and C Concrete”) and Jose R. Herrera, Jr. (collectively, “Defendants”), for failing  
21 to pay employee fringe benefits and make monthly reports in violation of the parties’ collective  
22 bargaining agreement, the trust agreements, and the Employee Retirement Income Security Act  
23 (“ERISA”). *See* Complaint, ECF No. 1 at 1-2, ¶ 1.<sup>1</sup>

24 Defendants were represented by attorney Scott Woodall. The court subsequently granted Mr.  
25 Woodall's motion to withdraw. *See Order Granting Defendants' Counsel's Motion to Withdraw,*

<sup>1</sup> Citations are to the Electronic Case File (“ECF”) with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 ECF No. 65 at 1. In the order, the court noted that “corporations may not appear in federal court  
2 except through counsel,” *see* N.D. Cal. Civil Local Rule 3-9(b), and ordered C and C Concrete to  
3 file a substitution of counsel by June 29, 2012. *Id.* at 3. It also ordered Mr. Herrera to file either a  
4 notice of his intention to proceed *pro se* or a substitution of counsel by June 29, 2012. *Id.* Neither C  
5 and C Concrete nor Mr. Herrera filed anything.

6 On July 31, 2012, and at Plaintiffs’ request, the court dismissed Mr. Herrera from the case based  
7 on his bankruptcy discharge. *See* Notice of Discharge and Order, ECF No. 69.

8 The court previously ordered C & C Concrete to appear in court on August 2, 2012, at 11:00  
9 a.m., to show cause why it failed to file a substitution of counsel. Order to Show Cause, ECF No. 66  
10 at 2. It also ordered C & C Concrete to file a written response to the Order to Show Cause by July  
11 26, 2012. *Id.* C & C Concrete did not file a response or appear in court as ordered on August 2,  
12 2012. Plaintiffs appeared through counsel

13 Plaintiffs thus have asked the court to strike Defendant C & C Concrete’s Answer to the First  
14 Amended Complaint, thus allowing Plaintiffs to proceed in default against C & C Concrete. *See*  
15 Plaintiffs’ Case Management Conference Statement, ECF No. 67 at 3.

16 Accordingly, no later than September 20, 2012 at 11 a.m., Defendant C & C Concrete shall show  
17 cause why its answer to the First Amended Complaint should not be stricken. If C & C Concrete’s  
18 answer is stricken, Plaintiffs then will be permitted to apply for entry of default judgment and  
19 default judgment against it.

20 Although C & C Concrete may not appear except through counsel, for the limited purpose of  
21 responding to this order to show cause, C & C Concrete may submit the declaration of an authorized  
22 representative setting forth any efforts it has made to obtain counsel, and any reasons it may have  
23 that its answer should not be stricken. That must be filed by September 13, 2012. In the event that  
24 counsel for C & C Concrete enters an appearance on or before September 20, 2012, this order to  
25 show cause will be discharged automatically.

26 Pursuant to the order permitting Mr. Woodall’s withdrawal and requiring him to continue to  
27 serve on Defendants all papers in this case, service of this order on Mr. Woodall shall constitute  
28 service on C & C Concrete, and Mr. Woodall shall make all reasonable efforts to ensure that C & C

1 Concrete receives actual notice of this order as promptly as possible. *See Order*, ECF No. 65 at 3  
2 (under circumstances of this case, particularly with regard to C & C Concrete, which cannot appear  
3 except through counsel, Mr. Woodall must serve on Defendants all papers until a substitution of  
4 counsel is filed).

5 The court sets a further hearing for September 20, 2012, at 11 a.m.

6 **IT IS SO ORDERED.**

7 Dated: August 2, 2012

  
LAUREL BEELER  
United States Magistrate Judge